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has indicated his or her willingness to pay fees as high as those anticipated. Where a requester has been notified that the actual or estimated fees may exceed \$25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph will include the opportunity to confer with OFHEO personnel in order to reformulate the request to meet the requester's needs at a lower cost.

(b) *Aggregating requests.* A requester may not file multiple requests at the same time, each seeking portions of a record or records, solely in order to avoid the payment of fees. When OFHEO reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request into a series of requests for the purpose of evading the assessment of fees, OFHEO may aggregate such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period over which the requests have occurred. OFHEO will presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, OFHEO shall aggregate them only where there exists a solid basis for determining that such aggregation is warranted, *e.g.*, where the requests involve clearly related matters. Multiple requests regarding unrelated matters will not be aggregated.

(c) *Advance payment of fees.* (1) OFHEO does not require an advance payment before work is commenced or continued, unless—

(i) OFHEO estimates or determines that the fees are likely to exceed \$250.00. If it appears that the fees will exceed \$250.00, OFHEO will notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees. In the case of requesters with no history of payment, OFHEO may require an advance payment of fees in an amount up to the full estimated charge that will be incurred; or

(ii) The requester has previously failed to pay a fee in a timely fashion,

i.e., within 30 days of the date of a billing. In such cases, OFHEO may require the requester to pay the full amount owed plus any applicable interest, as provided in paragraph (d) of this section, or demonstrate that the fee owed has been paid, prior to processing any further record request. Under these circumstances, OFHEO may require the requester to make an advance payment of the full amount of the fees anticipated before processing a new request or finishing processing of a pending request from that requester.

(2) A request for an advance deposit shall include an offer to the requester to confer with identified OFHEO personnel to attempt to reformulate the request in a manner which will meet the needs of the requester at a lower cost.

(3) When OFHEO requests an advance payment of fees, the administrative time limits described in 5 U.S.C. 552(a)(6) begin only after OFHEO has received the advance payment.

(d) *Interest.* OFHEO may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. Once a fee payment has been received by OFHEO, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of the billing.

Subpart E—Testimony and Production of Documents in Legal Proceedings in Which OFHEO Is Not a Named Party

§ 1703.31 General purposes.

The purposes of this subpart are to maintain the confidentiality of official documents and information of OFHEO, conserve the time of employees for their official duties, maintain the impartial position of OFHEO in litigation in which OFHEO is not a named party, and enable the Director to determine when to authorize testimony and to produce documents in legal proceedings in which OFHEO is not a named party. This subpart sets forth the procedures to be followed with respect to testimony concerning official matters and production of official documents of OFHEO in legal proceedings

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in which OFHEO is not a named party. This subpart in no way affects the rights and procedures governing public access to official documents pursuant to the FOIA or the Privacy Act.

§ 1703.32 Definitions.

For the purpose of this subpart:

(a) *Court* means any entity conducting a legal proceeding.

(b) *Demand* means any order, subpoena, or other legal process for testimony or documents.

(c) *Legal proceeding* means any administrative, civil, or criminal proceeding, including a discovery proceeding therein, before a court of law, administrative board or commission, hearing officer, or other body in which OFHEO is not a named party or in which OFHEO has not instituted the administrative investigation or administrative hearing.

(d) *OFHEO Counsel* means the General Counsel or his or her designee, a Department of Justice attorney, or counsel authorized by OFHEO to act on behalf of OFHEO or an employee.

§ 1703.33 General policy.

It is the policy of OFHEO that in any legal proceeding in which OFHEO is not a named party, no employee shall, in response to a demand, produce any documents contained in the files of OFHEO, or disclose any information relating to, or based upon, documents contained in the files of OFHEO, or disclose or produce any documents acquired as part of the performance of that employee's official duties or because of that employee's official status. Under appropriate circumstances, the Director may grant exceptions in writing to this policy when the Director determines that the testimony of employees or disclosure of official documents would be in the best interest of OFHEO or in the public interest. Prior to any authorized testimony or release of official documents, the requesting party shall obtain a protective order from the court before which the action is pending to preserve the confidentiality of the testimony or documents subsequently produced. The protective order shall be in a form satisfactory to OFHEO.

§ 1703.34 Request for testimony or production of documents.

(a) No employee shall give testimony concerning official matters or produce any official documents in any legal proceeding to which OFHEO is not a named party without the prior written authorization of the Director.

(b) If testimony by an employee concerning official matters or the production of official documents is desired, the requesting party, or his or her attorney, shall submit a letter to the Director setting forth the title of the case, the forum, the requesting party's interest in the case, a summary of the issues in the litigation, the reasons for the request, and a showing that the desired testimony, documents, or information are not reasonably available from any other source. If an appearance or testimony is requested, the letter shall also set forth the intended use of the testimony, a general summary of the scope of the testimony requested, and a showing that no document could be provided and used in lieu of the testimony or other appearance requested.

(c) The General Counsel is authorized to consult with the requesting party or his or her attorney to refine and limit the request so that compliance is less burdensome, or obtain information necessary to make the determination described in § 1703.33 of this subpart. Failure of the requesting party, or his or her attorney, to cooperate in good faith with the General Counsel to enable the Director to make an informed determination under this subpart may serve as the basis for a determination not to comply with the request.

[63 FR 71005, Dec. 23, 1998. Redesignated and amended at 65 FR 81327, Dec. 26, 2000]

§ 1703.35 Scope of permissible testimony.

(a) The scope of permissible testimony by an employee is limited to that set forth in the written authorization granted that employee by the Director.

(b) Employees are not authorized to give opinion testimony, except as authorized by the Director. OFHEO, as the regulatory agency charged with the responsibility of examining, supervising, and regulating the financial safety and soundness and capital adequacy of the Enterprises under the